



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03622

Date and time of decision: 3 July 2018 12:35:00

M Simmons, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 23 May 2016 he lodged an application for a temporary protection visa.
2. On 13 September 2017 a delegate of the Minister for Immigration and Border Protection refused the application.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's legal representative provided written submissions to the IAA dated 9 October 2017 and a number of photos on 26 October 2017. To the extent these submissions contain legal argument and discuss the findings of the delegate I consider that they do not constitute new information.
5. The legal representative's submission refers to various sources of country information concerning Christianity in Iran. This information was not before the delegate. Contrary to the requirements of the Practice Direction, no explanation was provided for why this information could not have been given before the delegate's decision or for why this information constitutes credible personal information. These sources are dated between 2007 and 2016. The applicant was assisted before the Department by a registered migration agent. The delegate made their decision in September 2017 and it is not apparent why this information could not have been provided before that decision. There is no indication or suggestion that this information is credible personal information or that if it had been known it may affected consideration of the matter. Rather it appears on its face to be general country information on the situation in Iran and not particular to the applicant. The applicant has not satisfied me that either limb of s.473DD(b) is met in relation to any of the country information on Christianity and I must not consider this information. Nor am I satisfied that exceptional circumstances arise in this matter that would justify considering this material.
6. The legal representative also refers to various documents in the body of their submission on imputed political opinion and failed asylum seekers. The submission does not clearly identify the source of each piece of information. For example there are references to an Amnesty international report which has no publication date or source; the title and authors names of an article are given with no particulars of the publisher or where it can be accessed, and a document described only as an RRT Country Advice publication dated 19 August 2010 with no title or source. The one source which is clearly cited is a 2016 Human Rights Watch report, which predates the delegate's decision. On its face it appears to be general and dated country information. There are no submissions explaining why any of this information could not have been provided to the delegate, why it is credible personal information, or how it may have affected consideration of the applicant's matter. The applicant has not satisfied me of any of these matters and s.473DD(b) is not met in respect of any of this country information. Nor am I satisfied that exceptional circumstances arise in this matter that would justify considering this material.

7. The written submissions also raised new protection claims. The submission asserts that the applicant has shared posts about his religion on his [social media] page and that he has been active online sharing posts about his conversion and Christianity. This contradicts his narrative at interview. At the interview with the delegate his evidence was that he has not put any photos of his Christian activity on his [social media] because he does not want to create problems for his family in Iran. He also indicated that if he wanted he was able to take photos of his Christian activities and put them on [social media] to get a visa. But he has not done that as he does not want to use the religion for his own interest. is the applicant has also now claimed for the first time he has been active sharing anti-government posts on his [social media], though no particulars of these posts such as of the content, audience, or purpose were explained.
8. It is also claimed he has participated in his church and church community since arriving in Australia. This is not consistent with the applicant's evidence at interview on his church attendance. That is, he attended 3 times after moving to [City 1] then stopped until December 2016, and that he communicates with no one at the Church he currently attends due to language issues, and he does not attend services or bible studies. The evidence before the delegate did not suggest active church community participation and no letters of support from any such community have been provided.
9. The applicant was made aware at interview and by way of an information sheet that failure to provide relevant information before the delegate's decision may result in that information not being considered. No explanation was provided for why this information could not have been given before the delegate's decision or for why this information constitutes credible personal information, particularly in light of his previous evidence. No evidence of any [social media] post has been provided. There is no indication of when these posts were allegedly made or the applicant's motivation for doing so, or why he now no longer fears his family in Iran may suffer retribution from actions on Social Media. Nor is there corroborative evidence in support of the assertion participated in his church and church community since arriving in Australia. The applicant has not satisfied me that this information could not have been provided before the delegate made their decision. Nor, given the contradictions in the applicant's evidence and his delay in raising these claims, has he satisfied me that this is credible personal information. I am also not satisfied exceptional circumstances exist that would justify considering this material. The requirements of s.473DD are not met.
10. The applicant has also not explained why the photos of his relatives purporting to identify Basij and Sepah members could not have been supplied before the delegate's decision. Nor has he explained why this information constitutes credible personal information that may have affected the delegate's consideration of the applicant's claims had they been known. While his statutory declaration indicates his parents were supportive of the political establishment, he has never previously claimed that he had relatives who were members of the Basij or the Sepah. Given he has claimed to fear harm from the Sepah, I have concerns that this is only being disclosed now. Nor has the applicant accounted for how this new information can be reconciled with his claims that the Sepah falsified political claims against him and sought to arrest him. He was advised on more than one occasion that information submitted after the delegate's decision may not be considered and he has had a legal representative throughout the process. In this context, the late disclosure of this information leads me to doubt its veracity. Further I note the delegate did not accept the applicant had any difficulties with the Sepah, including not accepting they visited him home in roughly April 2017 or that they fabricated political claims against him. The applicant has not satisfied me that these photos would have affected consideration of the applicant's protection claims had they been before the delegate. s.473DD(b) is not met.

11. On 7 June 2018 the Australian Department of Foreign Affairs and Trade (DFAT) released an updated Country Information Report on Iran. This report postdates the delegate's decision and contains more recent details on the situation for returnees and non-practising Muslims in Iran. It is a report prepared specifically for the purposes of protection determination in Australia and updates the report relied upon by the delegate. I am satisfied that there are exceptional circumstances which justify consideration of this information.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:

- Both the applicant's parents are religious and very much support the Islamic political establishment. The applicant is a non-practising Muslim.
- During his education he had some problems with Basij students due to his refusal to pray and to join the Basij force. He finished his school in [year]. He has completed mandatory military service.
- He previously worked in a state owned [company]. At work he never took part in prayers and became known as an employee who did not practise Islam. In mid-2008 he began working under a new manager who was religiously devout and encouraged employees to pray and grow facial hair. The applicant was considered to be irreligious by this person and therefore against the regime. The applicant was dismissed by a senior manager, who advised he could send him to Evin prison based on his personnel file and that he should never apply for another public sector job.
- The applicant later had a business buying and on selling [goods]. A purchaser gave him a cheque which was dishonoured. In turn he was unable to pay the supplier the debt he owed him for the [goods]. Around 2 months before the applicant left Iran the supplier, [sold] the bounced cheque to loan sharks who had connection to the Sepah. After this the applicant received numerous threats. The applicant sold everything he owned to try to cover the debt, but he was only able to pay part of the money that was owed. He feared the loan sharks may harm him. He was chased by them once on a motorbike and managed to escape by running into a park.
- He and his family contacted the police, but they advised nothing could be done until the loan sharks actually harmed him. Because of the threats he went to hide in his ancestral village for around 4 weeks before making arrangements to flee Iran.
- The applicant has converted to Christianity while in Australia. He has been interested in Christianity since he moved to [City 1] in August 2013. He attended a [church] near his home 3 times in 2013, but stopped going because the service was in English. He discusses the bible with friends 1-2 times per month.
- Around Christmas 2016 he accidentally walked into a church [in] [City 1]. He was drawn to this church and began visiting to pray and read his Persian bible. He now goes to this church once or twice a week. He does not attend services or bible study and has not spoken with members of the congregation, the clergy or church staff because he is embarrassed by his English abilities.
- He has not yet been baptised, but intends to be in the future once he has enough information about Christianity. He has not been able to join any churches attended by Iranians because he fear there may be spies there, and because people who go to those

churches are only trying to use religion to get a protection visa. He has not told his family about his interest in Christianity.

- In approximately April 2017 the Sepah inquired at the applicant's family's home and asked when he would be returning to Iran. They showed his brother a warrant for his arrest. They said they had photos of the applicant taking part in the 2009 election protests, but the applicant was never at any such protest.
- The applicant fears being harmed if he were to return to Iran because he has sought asylum in a western country. He will be questioned at the airport and because of this the authorities will come to know he is now a Christian.

Factual findings

Identity and background

13. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Farsi and English and has submitted copies of Iranian identity documents. I accept the applicant's nationality and identity are as claimed and find Iran to be his receiving country.

Religion

14. I am prepared to accept that the applicant no longer practises Islam and ceased doing so in Iran. Country information indicates that non-practising Muslims form a large part of the population of Iranian cities.¹
15. It is plausible that at some stage while undertaking schooling in the 1990s the applicant was harassed by members of the student Basij for non-observance. In his statutory declaration the applicant states that his business venture went bankrupt and he had to leave Iran because of issues resulting from this. This evidence indicates that his claimed difficulties due to being a non-practising Muslim, at school and at his government employment, were not reasons for his departure as both occurred a number of years before he left Iran I am satisfied this is the case.
16. In his statutory declaration the applicant states he was handed a letter of dismissal after being let go from the government job for religious reasons. His evidence at interview was that no dismissal letter was given to him. He has not accounted for this inconsistency. I also have doubts as to whether the applicant would be able to obtain a passport in his own name and depart the country without issue, on three separate occasions, if he had been dismissed and barred from government employment for religious reasons and was perceived as being anti-regime. I note while he provided particulars of this employment in his arrival interview, he did not give any indication that he was dismissed from this job and did not allude to the reasons for his dismissal. There is also no mention of the claimed dismissal and employment ban for religious reasons in his visa application. While I note in the statutory declaration provided prior to the interview with the delegate interview, it claimed that due to time constraints he did not present all his claims in the arrival interview. This that does not explain why this claim was omitted from the visa application, which were prepared by the same legal representative that later helped prepare the statutory declaration. Cumulatively, and given my findings below on his credibility, I do not accept that the applicant was dismissed for religious reasons or that he was subject to a government employment ban.

¹ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

17. The applicant first mentioned his interest in Christianity in a statutory declaration submitted shortly before the interview with delegate in July 2017. It was not reflected in his visa application from May 2016. There is no indication he has any interest in Christianity in that application in which he described his religion as a non-practising Muslim. When questioned about this at interview the applicant suggested maybe he made a mistake. The applicant had the benefit of a legal representative when preparing his visa application, the statutory declaration, and at interview. In the statutory declaration he claimed that due to time constraints and not knowing what was important he did not present all his claims in the arrival interview. That is plausible. However, that does not account for the variation between the visa application and that statutory declaration, both of which were prepared by the same legal representative.
18. His evidence at interview included that he first attended church after moving to [City 1] in 2014 (his visa application indicates he moved to [City 1] in August 2013). He also claimed to have been talking with Christian friends about the bible for roughly 4 years before the interview, which would be approximately July 2013. The applicant's statement refers to receiving encouragement with his Christian studies from an Australia Christian friend, '[Name 1]'. This person was not mentioned at interview, though he did refer to reading the bible with a friend called '[Name 2]'. The applicant clearly stated at interview that he had not shared religious material on social media because he did not want to expose his family in Iran to risk and he did not want to use his new religion just to obtain a protection visa.
19. The applicant asserts he will definitely become baptised in the future but first he wants to have adequate information about Christianity. At the time of the delegate's interview the applicant claimed he had been reading the bible with his Christian friends for around 4 years, 1-2 times per month. However, he was unable to identify the topic of the last discussion they had about the bible, other than that it was about Jesus's forgiveness. His evidence on these claimed regular discussions was vague, for example he was not forthcoming in providing details such as where they occurred, who generally attended, or how the sessions were conducted.
20. He was asked to identify any bible passage that had meaning to him or simply any passage he could remember. He was unable to do so, even after his representative interjected and alluded to a discussion they had in his office concerning bible passages. Considering the applicant has claimed to have an interest in Christianity of more than 4 years, and that he claims to have his own Farsi bible which he reads regularly in church and discusses with friends, I consider his inability to recall any bible passage significant. It does not suggest he has substantially expanded his knowledge or understanding of the Christian faith during his over 4 years of claimed interest in that religion.
21. The applicant's discussion of his religious beliefs often reverted to a comparison of Islam and Christianity. For a convert this is understandable to some extent. However, when probed for details on his Christian beliefs, for example when asked to discuss Jesus and his miracles, the applicant's recourse back to simply criticising Islam created the impression he was seeking to avoid questions concerning Christianity. His answers were also generally vague, brief, and his responses seemed hesitant. For example, when asked "what does Jesus mean to you" his response was that Jesus is cleanliness, truthfulness and kindness; he sacrificed himself for his disciples. He was unable to freely discuss his own personal convictions or provide detail of his own understanding of the Christian faith and its practice. This is in contrast to his evidence on past events in Iran, where he often gave longer flowing narratives which required pauses to allow for interpretation.

22. I do not accept that the applicant has a genuine interest in Christianity. I do not accept that he has converted to this religion, nor do I accept he will do so in the foreseeable future. I accept that he attended a church on three occasions after moving to [City 1], and I accept that he may have entered a church [in City 1] on occasions. I do not accept he attends church regularly for prayer, nor do I accept that he has been regularly reading and discussing the bible with friends. I consider the Christianity related activities he engaged in since arriving in Australia has been undertaken for the sole purpose of strengthening his claims to protection.

Loan Sharks

23. The applicant's evidence in relation to the creditor who pursued him, [supplier], and his purported links to the Sepah has changed significantly. In his statutory declaration he claims that the Sepah agents who visits his house told his brother paying back the debt to [the supplier] would not be enough to save his life, and he pondered how [the supplier] managed to get the Sepah involved. His evidence at interview, 3 days after the statutory declaration was signed, was that [the supplier] was not connected to the Sepah at all and that [the supplier] is now 'out of this issue'. His problems lie with the criminal loan sharks who bought the debt of [the supplier] and that they are linked to the Sepah and [the supplier] is not threatening or pursuing him.

24. The applicant claimed to have received threats in relation to the debt by telephone, SMS and letter. No corroborative evidence of these threats has been submitted, such as copies of the SMS or letters. The applicant has also not supplied any supporting evidence to corroborate his claimed operation of a [business].

25. In the visa application the applicant stated his father moved house three times after he left Iran to avoid the debt collectors. He stated at interview that his mother and father are not well as they are still receiving threats in relation to the debt, however he indicated that only harm they had experienced was damage to his father's car. I have doubts as to whether it is plausible that the applicant's parents would continue to be subject to sustained threats over 5 years after the applicant's departure from Iran. The applicant's evidence in the statutory declaration and at interview seems to allude to only once incidence of his family being contacted in relation to the debt since he departed Iran. That appears to be by the Sepah in roughly April 2017. He has not elaborated on the claimed on going threats against his family by providing any other examples.

26. The applicant's evidence is that he was able to leave Iran lawfully via a major international airport using his own genuine Iranian passport. The Sepah have the power to impose travel bans without recourse to the judiciary.² His ability to depart suggests he was not of any interest to the Iranian authorities at the time of his departure, and that even if the loan sharks did have links to the Sepah as claimed, their influence was not sufficient to encourage the Sepah to prevent his departure.

27. In light of my concerns with the applicant's evidence, and given I have found him to be not credible in relation to other key elements of his claims, I am not satisfied that the applicant owes a debt or that he has ever been pursued by loan sharks. I do not accept that he or any member of his family has ever been harmed or threatened in relation to any business debt, either by [the supplier] or loan sharks.

Sepah, 2009 protests

² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

28. In his statutory declaration the applicant indicated that the Sepah fabricated false political claims against him because of the issue with the debt and showed his brother a warrant for his arrest. It was claimed they told his brother they had photos of him attending the 2009 election protests when the applicant asserts he was never at any such protest. It was suggested at interview that he may be able to ask his brother for a copy of the Sepah arrest warrant, however this has not been forthcoming and the matter was not addressed in submissions to the IAA.
29. His evidence at interview on this subject changed, a matter of days after the statutory declaration was signed. He claimed that initially his brother thought the Sepah visit was due to the cheque but actually they told him that it was because during his government employment he spoke against the establishment at the supreme leader. The Sepah visited in roughly April 2017 and the applicant was dismissed from his government job in roughly March 2009. I do not consider it plausible that the Sepah would pursue him roughly 8 years after his dismissal from his government job. Or that if there were interested in him for this reason I do not consider it plausible they would wait so long before taking any action against him. The applicant travelled through [the] airport twice in 2011 and once in 2013 without being stopped by the authorities.
30. I have not accepted that the applicant was dismissed for the reasons claimed or that he was ever pursued and threatened in relation to a business debt. Therefore, I am not satisfied that the Sepah visited is family home in April 2017 for either reason. Furthermore, I consider this to be another example of the applicant varying his evidence.

Returning asylum seeker

31. The applicant did not advance a claim to fear harm because he would return to Iran as a 'failed' asylum seeker although the delegate appears to have identified this claim himself. The applicant left Iran lawfully on his own Iranian passport through a major international airport without incidence. I am satisfied he was not of any adverse interest to the Iranian authorities for any reason at that time. However, I accept that if he were to return to Iran in the future he would do so after having requested asylum in a western country.

Refugee assessment

32. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

33. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Religion

34. I consider all the applicant's Christianity related activities since arriving in Australia have been undertaken for the sole purpose of obtaining a protection visa. The applicant has not satisfied me that this conduct was carried out for any other purpose. Accordingly, I have disregarded it from my consideration of whether the applicant has a well-founded fear of persecution per s.5J(6). I do not accept that the applicant has a genuine interest in Christianity, that he has converted to this religion, or that he will do so in the foreseeable future. I am not satisfied he would pursue any interest in Christianity in Iran were to return there, and there is no indication he ever did so when he lived in that country.

35. I accept that the applicant is a non-practising Shia Muslim. I have not accepted that the applicant was ever adversely treated for being a non-practising Muslim in Iran. This is generally consistent with country information, which indicates that non-practising Muslims are rarely questioned about religious practice or pressured to observe Muslim precepts.³ The June 2014 Danish Immigration Service fact finding mission assessed that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques.⁴ A senior research fellow in Iranian studies at a university in Germany stated that non-practising Muslims generally lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts.⁵ Given this information, and that I do not accept the applicant has previously attracted adverse attention or experienced any harm for being a non-practising Muslim while in Iran, I am not satisfied there is a real chance he may experience any harm for this reason in the foreseeable future.

36. I am not satisfied there is a real chance the applicant would experience any harm for any religious reasons in the foreseeable future were he to return to Iran.

Loan Sharks, Sepah

37. I have not accepted that the applicant owes a debt or that he has ever been pursued by loan sharks or [the supplier], or that he or any member of his family has ever been harmed or threatened in relation to any business debt, either by [the supplier] or loan sharks. I do not accept that the applicant was ever pursued by the Sepah, subject of an arrest warrant or fabricated political accusations. I have found the applicant's claims regarding the business debt, loan sharks and the Sepah have no credible basis. As I do not accept that these events occurred, I do not accept that he would have any chance of harm in Iran in the foreseeable future for these reasons.

³ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁴ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

⁵ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

Returning asylum seeker

38. DFAT reports that credible sources have advised that returnees will generally only be questioned if they had done something to attract the specific attention of the Iranian authorities.⁶ Reports indicate that persons who have engaged in anti-regime activism overseas, or who have a known anti-regime profile in Iran, may be subject to arbitrary arrest, detention and mistreatment upon return to Iran.⁷ I have found that the applicant was not of any adverse interest for any reason at the time he left Iran. DFAT assesses that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁸ There is no indication he has become politically engaged while in Australia and I am not satisfied he has otherwise engaged in any conduct that would be of interest to the Iranian authorities while in Australia. Furthermore, the material before me does not suggest a real chance of harm should the authorities come to know he previously sought asylum in a western country.⁹

Refugee: conclusion

39. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

40. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

41. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

42. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.¹⁰ I have concluded for the reasons set out that the applicant does not

⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁷ Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610.

⁸ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", *Danish Refugee Council, Landinfo and Danish Immigration Service*, 01 February 2013, CIS25114.

¹⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

face a real chance of any harm for being a non practising Shia Muslim, due to any business debit, due to false political charges from the Sepah, or for being a returning asylum seeker. As such, I am also satisfied that there is not a real risk that he would face harm, including significant harm, for any of these reasons were he to return to Iran.

43. I have considered the applicant's Christian activities in Australia, including his occasional church visitation. As I do not accept that he has a genuine interest in Christianity or that he has become a Christian. I am not satisfied he would pursue this religion were he to return to Iran in the foreseeable future. International observers have advised DFAT that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran, provided they have not previously come to the attention of authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytization or political activities within the country.¹¹ I do not accept that applicant has converted or that he will convert. Given his limited Christian activities in Australia, and that on his own evidence he is not known amongst any church congregation, I am satisfied that his conduct in Australia would not bring him to the adverse attention of the authorities in Iran or that it would of interest to them even if it did become known. I am not satisfied there is a real risk of significant harm due to his Christian activities in Australia.

Complementary protection: conclusion

44. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that: The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

¹¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.